

ADAM WANG, Bar No. 201233
 LAW OFFICES OF ADAM WANG
 12 South First Street, Suite 613
 San Jose, CA 95113
 Tel: (408) 421-3403
 Fax: (408) 416-0248
waqw@sbcglobal.net

Attorney for Plaintiff
 OSCAR GILBON

UNITED STATES DISTRICT COURT
 FOR DISTRICT OF NORTHERN CALIFORNIA

OSCAR GILBON , individually and on behalf
 of others similarly situated

Plaintiff,

vs.

STRAITS SANTANA ROW, LLC dba
 STRAITS SANTANA, CHRISTOPHER YEO,
 and DOES 1 TO 10

Defendants

Case No.: C08-3820 JW

**CLASS ACTION COMPLAINT AND
 DEMAND FOR JURY TRIAL:**

1). Violation of California Labor Code §1194;
 2). Violations of The Fair Labor Standards Act
 (Non-payment of overtime); 3). Violation of
 Labor Code §226.7; 4). "Waiting Time"
 Penalties under California Labor Code §203; 5).
 For Restitution of Unpaid Wages in Violation of
 California Unfair Trade Practices Act under
 Business and Professions Code § 17203; and 6).
 Violation of California Labor Code §226.

Plaintiff, OSCAR GILBON, on his own behalf and on behalf of others similarly situated,
 alleges as follows:

NATURE OF CLAIM

1. This is a class action on behalf of putative members who had been employed on
 an hourly rate basis by Defendants STRAITS SANTANA ROW, LLC dba STRAITS
 SANTANA, CHRISTOPHER YEO, and DOES 1-10(collectively referred to as "STRAITS
 SANTANA") for some period during the last four years of the filing of this Complaint, seeking
 damages arising out of their employer's failure to pay overtime as required by the Fair Labor
 Standards Act ("FLSA") and the California Wage Orders and statutes. On Plaintiff's own behalf

1 and on behalf of other similarly situated individuals who fall within the relevant statutory
 2 periods, Plaintiff seeks compensatory damages for unpaid wages under California Labor Code
 3 and Wage Orders, liquidated damages under 29 U.S.C. §216(b), damages under California Labor
 4 Code §226.7 for failure to provide meal and rest periods, waiting time penalties under California
 5 Labor Code § 203, and attorney's fees, costs, pre judgment interest pursuant to California Labor
 6 Code § 1194(a) and 29 U.S.C. § 216(b), and restitution under California Unfair Trade Practices
 7 Act under California Business and Professions Code § 17203.

8 2. Plaintiff brings this collective action on behalf of himself and other hourly paid
 9 employees pursuant to 29 U.S.C. §216(b) with respect to unpaid overtime and liquidated
 10 damages arising under Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

11 **PARTIES**

12 3. At all times relevant herein, Plaintiff GILBON is an individual resident of Santa
 13 Clara, California.

14 4. Individual Defendant STRAITS SANTANA ROW LLC is the owner of the sole
 15 proprietorship of business called STRAITS SANTANA, with its primary place of business in
 16 San Jose, California.

17 5. The individual Defendants CHRISTOPHER YEO and DOES 1 to 10, inclusive,
 18 according to information and belief, are the owners and officers or managers of STRAITS
 19 SANTANA, having control over the work conditions and situation of Plaintiff and other
 20 employees.

21 6. The individual Defendants CHRISTOPHER YEO and DOES 1 to 10, inclusive
 22 are liable for the acts of STRAITS SANTANA ROW, LLC as alter egos. Recognition of
 23 privilege of separate existence would be promote injustice because these individual Defendants
 24 have in bad faith dominated and controlled STRAITS SANTANA ROW, LLC in such a way that
 25 any separateness of form should be disregarded to prevent fraud and injustice. Plaintiff is
 informed, and believes and thereon alleges that individual Defendants have:

a. Commingled funds and other assets of STRAITS SANTANA ROW, LLC and

1 their funds and other assets for their own convenience and to assist the evasion of
2 payment of obligations;

3 b. Diverted funds and other assets of STRAITS SANTANA ROW, LLC to other
4 uses other than corporate uses;

5 c. Treated the assets of STRAITS SANTANA ROW, LLC as their own;

6 d. Failed to obtain authority to issue shares or to subscribe to issue shares of
7 STRAITS SANTANA ROW, LLC;

8 e. Failed to maintain minutes or adequate corporate records of STRAITS
9 SANTANA ROW, LLC;

10 f. Failed to adequately capitalize or provide any assets to STRAITS SANTANA
11 ROW, LLC; and

12 g. Diverted assets from STRAITS SANTANA ROW, LLC to themselves to the
13 detriment of creditors, including Plaintiff and other hourly employees.

14 **SUBJECT MATTER JURISDICTION AND VENUE**

15 7. Subject matter jurisdiction of this action of this Court is based upon Fair Labor
16 Standards Act, 29 U.S.C. §§201 *et. seq.* and the pendant jurisdiction of this Court.

17 8. This Court is a proper venue, since all events giving rise to the claims of the
18 named Plaintiff and the putative class members occurred in this district.

19 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

20 9. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
21 Procedures 23(a) and (b)(3) on behalf of all those who had been employed on hourly rate basis
22 by defendants with respect to the claims alleged herein arising under California Labor Code, and
23 California Business and Professions Code 17200, *et seq.*

24 10. Plaintiff also brings this action on behalf of such class members pursuant to 29
25 U.S.C. 216(b) with respect to unpaid overtime and liquidated damages arising under Fair Labor
Standards Act, 29 U.S.C. 201, *et seq.*

1 11. The members of the purported class or subclass are so numerous that joinder of all
2 members is impractical. According to information and belief, Defendants had employed a fairly
3 large hourly workforce. While the exact number of class or subclass members is unknown to
4 Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff
5 believes that there are at least 30 or more members in the proposed class. Members of the class
6 or subclass may be identified from payroll and time records maintained by Defendants, and may
7 be notified of the pendency of this action by mail, or other appropriate media, using the notice
8 similar to that customarily used in the wage and hour class actions.

9 12. Plaintiff's claims are typical of the claims of the members of the class and
10 subclass as all members of the class and subclass are similarly affected by Defendants' wrongful
11 conduct in violation of federal and state laws governing labor standards that is complained of
12 herein.

13 13. Plaintiff will fairly and adequately protect the interest of the members of the class
14 and subclass and have retained counsel competent and experience in wage and hour litigation.

15 14. Common questions of law and fact exist as to all members of the class and
16 predominate over any questions solely affecting individual members of the class. Among these
17 questions of law and fact common to the class and subclass are:

- 18 a. Whether federal and state wage hour laws were violated by Defendants' acts
19 as alleged herein;
- 20 b. Whether Defendants have properly paid all putative class members for the
21 hours that were worked in excess of 8 hours a day, or 40 hours a week
- 22 c. Whether the Defendants are liable for failure to pay the subclass members
23 whose employment terminated during the last three years the overtime wages
24 owed ascertainable at the time of termination of their employment;
- 25 d. To what extent the member of the class and subclass have sustained damages
and the proper measure of damages.

15. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy since joinder of all members is impractical. Furthermore, as the
2 damages suffered by individual class and subclass members may be relatively small, the expense
3 and burden of individual litigation make it impossible for all members of the class to individually
4 redress the wrongs done to them. There will be no difficulty in the management of this action as
5 class action.

6 **SUBSTANTIVE ALLEGATIONS**

7 16. Plaintiff was employed on an hourly rate by Defendants for some period during
8 the last three years.

9 17. During the last three years, Plaintiff and other hourly paid employees worked over
10 8 hours a day and forty fours a week from time to time on regular basis.

11 18. Plaintiff and such other hourly rate employees were not subject to any exemptions
12 from overtime pursuant to the Fair Labor Standards Act and California Labor Code.

13 19. Despite working in excess of 8 hours a day and 40 hours a week, Plaintiff and
14 other putative class members were not paid required one and one-half of regular rate for
15 overtime hours worked.

16 20. Within 72 hours of termination of Plaintiff and other hourly rate employees,
17 Defendants willfully failed to pay them wages owed, the amount of which was readily
18 ascertainable at the time of termination.

19 **COUNT ONE**

20 *Violation of California Labor Code, Non Payment of Overtime*

21 *Labor Code Sections §510*

22 21. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-20 as if fully
23 stated herein.

24 22. During last three years, Plaintiff's employment was subject to California Labor
25 Code Sections 1194 and 510, and the applicable Wage Orders promulgated by the California
Industrial Welfare Commission pursuant to Labor Code Section 1173, which required all
employees to be paid overtime for work performed in excess of forty hours per week or eight

1 hours per day, unless specifically exempted by the law.

2 23. During his employment with the Defendants, Plaintiff regularly worked in excess
3 of forty hours per week and in excess of eight hours per day. Plaintiff received only straight time,
4 or at some times nothing at all, from Defendants for these overtime hours.

5 24. During last the three years, Defendants knowingly caused, suffered and permitted
6 Plaintiff to regularly work in excess of forty hours per week and eight hours per day without
7 paying them one and one half or double of his regular rate of pay.

8 25. By not paying overtime wages in compliance with the state law, Defendants
9 violated Plaintiff's rights under the law, specifically California Labor Code Section 1194.

10 26. As a direct and proximate result of Defendants' failure to pay proper wages under
11 the California Wage Orders, Plaintiff incurred general damages in the form of lost overtime
12 compensation in amounts to be proven at trial.

13 27. Defendants had been aware of the existence and requirements of the California
14 Labor Code Sections 510 and 1194 and the Wage Orders, and willfully, knowingly and
15 intentionally failed to pay Plaintiff and other hourly employees the overtime compensation due
16 to them at the time their employment ended.

17 28. Plaintiff was required to retain an attorney for the purpose of bringing this action
18 and is entitled to an award of attorney's fees and pre-judgment interest pursuant to California
19 Labor Code Section 1194(a).

WHEREFORE, Plaintiff prays for judgment as set forth below.

20 **COUNT TWO**

21 *Violation of the Fair Labor Standards Act*

22 *29 U.S.C. § 201, et seq.*

23 29. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-28 as if fully
24 stated herein.

25 30. At all relevant times herein, Plaintiff's and other hourly rate employees'
employments were subject to the provisions of the Fair Labor Standards Act of 1938, as

1 amended ("FLSA"), 29 U.S.C. Section 201, *et seq.*

2 31. 29 U.S.C. § 207 requires all employees to be paid overtime for work performed in
3 excess of forty hours per week, unless specifically exempted by the law.

4 32. Although Plaintiff and other hourly rate employees were not so exempt during
5 their employment with Defendants, and although Defendants had been fully aware of both the
6 hours worked and the duties assigned to the Plaintiff and other hourly rate employees,
7 Defendants knowingly caused, suffered, and permitted Plaintiff and other hourly rate employees
8 to regularly work in excess of forty hours per week without paying them one and one half of
9 their regular rate of pay.

10 33. By not paying overtime wages in compliance with FLSA, Defendants violated the
11 rights of Plaintiff and other hourly rate employees under FLSA.

12 34. As a direct and proximate result of Defendants' failure to pay proper wages under
13 the FLSA, Plaintiff and other hourly rate employees incurred general damages in the form of lost
14 overtime wages.

15 35. Defendants intentionally, with reckless disregard for their responsibilities under
16 the FLSA, and without good cause, failed to pay Plaintiff and other hourly rate employees their
17 proper pay, and thus Defendants are liable to Plaintiff and other hourly rate employees for
18 liquidated damages in an amount equal to their lost overtime wages pursuant to 29 U.S.C. §
19 216(b).

20 36. Plaintiff was required to retain an attorney for bringing this action and is entitled
21 to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b).

22 WHEREFORE, Plaintiff prays for judgment as set forth below.
23
24
25

COUNT THREE

Failure to Provide Meal Periods

California Labor Code § 226.7

37. Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1-36 as if fully restated hereinafter.

38. At all relevant times herein, Plaintiff's and other hourly employees' employments with Defendants were subject to the provisions of California Labor Code § 226.7, which requires the employer to provide employees a thirty-minute meal break for every five hours worked, unless expressly exempted.

39. During Plaintiff's employment with Defendants, Plaintiff and other hourly employees worked at least 5 hours a day, and was not provided meal period as required by law.

40. For each time that Plaintiff and other hourly employees were not provided the required meal period, they are entitled to recover one additional hour of pay at each employee's regular rate of compensation pursuant to California Labor Code section 226.7.

41. Plaintiff and other hourly employees are therefore entitled to payment, in an amount to be proved at trial for additional pay for each meal period that Defendants failed to provide.

WHEREFORE, Plaintiff prays for judgment as set forth below.

COUNT FOUR

Penalty for Failure to Pay Wages at Termination

California Labor Code Sec. 203

42. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-41 as if fully stated herein.

43. Within 72 hours of the termination of Plaintiff's and other hourly employees' employments, Defendants failed to pay them the wages owed ascertainable at the time of

1 termination

2 44. Failure to pay proper wages at an employee's termination as required by Labor
3 Code §201 subjects the employer to penalties provided for in Labor Code Section 203, up to 30
4 days of wages.

5 45. As of this date these wages have not been paid to Plaintiff or other hourly
6 employees, thus making Defendants liable to them for penalties equal to 30 days wages in
7 amount to be proven at trial.

8 WHEREFORE, Plaintiff prays for judgment as set forth below.

9 **COUNT FIVE**

10 *For Restitution of Unpaid Overtime Wages*
11 *in Violation of California's Unfair Trade Practices Act*

12 *Business and Profession Code § 17203*

13 46. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-45 as if fully
14 stated herein.

15 47. At all times relevant herein, the employment with Defendants was subject to
16 California Labor Code and applicable Wage Orders promulgated by the California Industrial
17 Welfare Commission as well as FLSA, all of which required all employees to be paid overtime
18 for work performed in excess of forty hours per week or eight hours per day unless specifically
19 exempted by the law. California law also requires premium pay for missed meal periods.

20 48. During the last three years, Defendants were subject to the California Unfair
21 Trade Practices Act (California Business and Professions Code Section §17000 *et seq.*), but
22 failed to pay the Plaintiff overtime pay and premium pay for missed meal periods as required
23 by FLSA, California Labor Code and applicable Wage Orders.

24 49. During the last three years, Defendants kept to themselves the unpaid overtime
25 and meal period premiums which should have been paid to the Plaintiff and other hourly
employees.

1 payment is being made, any and all applicable piece rates, and the current address and name of
2 the employer.

3 56. California Labor Code Section 226 further provides that any employee suffering
4 injury due to a willful violation of the aforementioned obligations may collect the greater of
5 either actual damages or \$50 for the first inadequate pay statement and \$100 for each
6 inadequate statement thereafter.

7 57. During the course of Plaintiffs' employment, Defendants consistently failed to
8 provide Plaintiffs with adequate pay statements as required by California Labor Code §226

9 58. Defendants failed to provide such adequate statements willingly and with full
10 knowledge of their obligations under Section 226.

11 59. Defendants' failure to provide such adequate statements has caused injury to the
12 Plaintiffs.

13 60. Plaintiffs are therefore legally entitled to recover actual damages caused by
14 Defendants' failure to provide proper records, in an amount to be determined at trial

15 61. Plaintiffs have incurred costs and fees in bringing this action and seeks to recover
16 such costs under California Labor Code §226.

17 PRAYER FOR RELIEF

18 WHEREFORE, the Plaintiff prays for judgment against the Defendants and demand as
19 follows:

20 1. Award compensatory damages for unpaid overtime in amounts to be proven at trial to
21 Plaintiff and other hourly employees;

22 2. Award liquidated damages equal to the overtime pay owed to Plaintiff and other hourly
23 employees;

24 3. Award to Plaintiff and other hourly employees the meal period premium owed during
25 last four years;

1 4. Award to Plaintiff and other hourly employees the pre-judgment interest of 10% on the
2 unpaid overtime compensation and unpaid meal period premium pursuant to California Labor
3 Code §§ 1194(a) & 218.6.

4 5. Award the Plaintiff and other hourly employees the waiting time penalty damages of
5 thirty days wages pursuant to California Labor Code Section 203 in amounts to be proven at
6 trial;

7 6. Award Plaintiff and other hourly employees the restitution of unpaid overtime pay and
8 other wages pursuant to California Business and Professions Code §17203 in amounts to be
9 proven at trial;

10 7. Enter a permanent injunctive order against Defendants ensuring the compliance with
11 the FLSA and California Labor Code and wage orders;

12 8. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29
13 U.S.C. §216(b) of the FLSA;

14 9. Award Plaintiff the costs of suit herein.

15 10. Grant such other and further relief as the Court may deem appropriate.

16 Dated: Dated August 6, 2008

17 By: /s/ ADAM WANG.
18 Attorney for Plaintiff
19
20
21
22
23
24
25